

1 HONORABLE RICHARD A. JONES  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 CYPRESS INSURANCE COMPANY, as  
11 subrogee of Microsoft Corporation,

12 Plaintiff,

13 Case No. 2:17-cv-00467-RAJ

14 v.

15 **OMNIBUS ORDER**

16 SK HYNIX AMERICA INC.,

17 Defendant.

18 This order addresses the admission of Plaintiff's Exhibit Nos. 383 and 384,  
19 Plaintiff's motions for judgment as a matter of law, and Defendant's motion for judgment  
20 of a matter of law.

21 **A. Plaintiff's Exhibit Nos. 383 and 384**

22 Plaintiff's Exhibit No. 383 is **ADMITTED** by stipulation of the parties. The Court  
23 will also **ADMIT** Plaintiff's Exhibit 384 (RFA Nos. 43-50) subject to redactions. The  
24 Court requires Plaintiff to redact the objections to Request for Admission Nos. 43-50, so  
25 that each response begins with: "SKHA states as follows ...."

26 **B. Plaintiff's Motions for Judgment as a Matter of Law**

27 Plaintiff's moved for judgment as a matter of law on Day 9 of trial. Dkt. # 273. The  
28 Court rules as follows:

29 **i. Breach of the Buffer Inventory**

30 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no

1 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on the issue of  
2 damages.

3           **ii. Voluntary Payor Affirmative Defense**

4 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no  
5 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on this issue.

6           **iii. Impracticability Affirmative Defense**

7 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no  
8 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on this issue.

9           **iv. Pre-Incident Conduct**

10 Plaintiff's motion is **DENIED**. Defendant, however, is precluded from referencing  
11 comparative fault or pre-incident conduct in closing arguments as a basis for reducing  
12 damages for breach of contract.

13           **v. Subsequent Delivery of DRAM chips**

14 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no  
15 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on that issue as  
16 it pertains to delivery under the Ninth Amendment.

17           **vi. Breach of the Capacity Commitment (Table 3) of the Ninth  
18 Amendment**

19 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no  
20 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on the issue of  
21 commercial reasonableness.

22           **vii. Breach of Ninth Amendment Regarding Purchase Orders**

23 Plaintiff's motion is **DENIED**. Disputed facts preclude finding that there is no  
24 legally sufficient evidentiary basis for a reasonable jury to find for Hynix on this issue.

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28 ORDER – 2

**C. Defendant's Motion for Judgment as a Matter of Law**

Plaintiff's moved for judgment as a matter of law on Day 9 of trial. Dkt. # 273. The Court rules as follows:

### i. Breach of Pricing Table of Ninth Amendment

Defendant's motion is **DENIED**. Disputed facts preclude finding that there is no legally sufficient evidentiary basis for a reasonable jury to find for Cypress on this issue.

DATED this 21st day of March, 2019.

Richard D. Jones

The Honorable Richard A. Jones  
United States District Judge